



DEPARTMENT OF ENERGY

Innovative Technologies Loan Guarantee Program

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Request for Information (“RFI”).

SUMMARY: The Loan Programs Office (“LPO”) of the Department of Energy (“DOE”) is seeking information to understand how it could improve its Title XVII Innovative Technologies Loan Guarantee Program (the “Title XVII Loan Guarantee Program”) and implement provisions of the Energy Act of 2020 and the Infrastructure Investment and Jobs Act (the “IIJA”) that expand or modify the authorities applicable to the Title XVII Loan Guarantee Program.

DATES: Comments must be received on or before ***[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]***. If you anticipate difficulty in submitting comments within that period, contact the person listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

ADDRESSES: Interested persons are encouraged to submit comments, identified by “Title XVII Loan Guarantee Program RFI,” by any of the following methods:

Email: LPO.ProposedRuleComments@hq.doe.gov. Include “Title XVII Loan Guarantee Program RFI” in the subject line of the message. Email attachments can be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, prepared in accordance with the detailed instructions in section III of this document.

Postal Mail: Loan Programs Office, Attn: LPO Legal Department, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121. Please submit one signed original paper copy. Due to potential delays in DOE’s receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Steven Westhoff, Attorney-Adviser, Loan Programs Office, email: *LPO.ProposedRuleComments@hq.doe.gov*, or phone: (240) 220-4994.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Background

B. Energy Act of 2020

C. IIJA

II. Request for Information

A. Energy Act of 2020

B. IIJA

C. Title XVII Financing Structures

D. Title XVII Loan Guarantee Program Improvements

III. Submission of Comments

I. Introduction

A. Background

LPO administers certain DOE lending programs, including under Title XVII of the Energy Policy Act of 2005, as amended (“Title XVII”).¹ Title XVII authorizes the Secretary of Energy (the “Secretary”) to make loan guarantees for projects that “avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases” and “employ new or significantly improved technologies as compared to commercial technologies in service in the United States.”² LPO has administered the Title XVII Loan Guarantee Program pursuant to its regulations set forth at 10 CFR part 609 (the “Title XVII Rule”), as required by the authorizing

¹ Pub. L. 109–58, title XVII (2005); 42 U.S.C. 16511 *et seq.*

² 42 U.S.C. 16513(a).

statute.³ LPO provides additional guidance to applicants and establishes requirements in the solicitations for loan guarantee applications, which are issued and updated from time to time.

The Title XVII Rule sets forth the policies and procedures that DOE uses for the application process, which includes receiving, evaluating, and approving applications for loan guarantees to support eligible projects under Title XVII. The rule establishes the process by which DOE issues solicitations for applications for loan guarantees for eligible projects. The rule applies to all applications, conditional commitments, and loan guarantee agreements under the Title XVII Loan Guarantee Program and provides specific guidance to program applicants regarding eligibility for the program, the loan guarantee application process and requirements, criteria for DOE's evaluation of applications, and the process for negotiation and execution of a loan guarantee agreement term sheet, conditional commitment, and loan guarantee agreement. The Title XVII Rule also describes the terms applicable to the loan guarantee. DOE is in the process of evaluating how it can improve the Title XVII Rule, in line with its statutory authority, including recent amendments.

B. Energy Act of 2020

The Energy Act of 2020 was enacted in December 2020, as Division Z of the Consolidated Appropriations Act, 2021.⁴ Section 9010 of the Energy Act of 2020 is entitled “Loan Program Office Title XVII Reform” and sets forth several modifications to the Title XVII Loan Guarantee Program through amendments to Sections 1702, 1703, and 1704 of the Energy Policy Act of 2005. The modifications include, but are not limited to, clarifying that the Secretary shall pay the cost of a guarantee, subject to availability of appropriations; specifying the time period for collection of fees for projects that reach financial closing; providing the Secretary the authority to reduce the fee for a guarantee; providing for certain interagency consultation requirements in connection with loan guarantees; requiring that the Secretary

³ 42 U.S.C. 16515(b), (d).

⁴ Pub. L. 116-260, Div. Z (2020).

respond to certain applicant requests regarding the status of its applications under the program; and expanding and clarifying project eligibility under the program.

C. IIJA

The IIJA⁵ was enacted in November 2021, as a historic investment in the Nation's infrastructure. The IIJA gives DOE express authority to support projects that increase the domestically produced supply of critical minerals⁶ and to provide loan guarantees to projects receiving financial support or credit enhancements from a State energy financing institution⁷.

II. Request for Information

The purpose of this RFI is to solicit feedback from project developers and sponsors, industry members, investors, developers, academia, research laboratories, government agencies, potentially impacted communities and other stakeholders on potential changes to DOE's Title XVII Rule. Specifically, DOE is seeking input on how it could revise the Title XVII Rule to (i) improve its Title XVII Loan Guarantee Program and (ii) implement certain provisions of the Energy Act of 2020 and the IIJA that expand or modify the authorities applicable to the Title XVII Loan Guarantee Program.

DOE seeks public input on the following questions regarding LPO's administration of the Title XVII Loan Guarantee Program:

A. Energy Act of 2020

Section 9010(a)(3)(A) of the Energy Act of 2020 amended Section 1703(h) of the Energy Policy Act of 2005 to require that the Secretary charge and collect a guarantee fee sufficient to

⁵ Pub. L. 117-58 (2021).

⁶ 42 U.S.C. 16513(b)(13), as added by Pub. L. 117-58, sec. 40401(a)(2)(A) (2021). Although projects that increase the domestically produced supply of critical minerals are eligible under Title XVII, additional congressional appropriation is required before DOE may provide loan guarantees for this category of projects. Pub. L. 117-58, sec. 40401(a)(2)(B)-(C) (2021). Domestic projects related to critical minerals may, however, also separately qualify under preexisting categories of eligible projects under Title XVII. *See* 10 CFR 609.2(a). *See also* Executive Order 14017, "America's Supply Chains," 86 FR 11849 (March 1, 2021); DOE, *America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition* (Feb. 24, 2022), available at <https://www.energy.gov/policy/articles/americas-strategy-secure-supply-chain-robust-clean-energy-transition>.

⁷ 42 U.S.C. 16512(a), as amended through Pub. L. 117-58, sec. 40401(c)(2)(A) (2021).

cover applicable administrative expenses (including costs associated with third-party consultants) only on or after the transaction’s financial closing.⁸ This amendment to Title XVII changed the way that DOE engaged and contracted with applicants and third-party advisors to DOE. Prior to the Energy Act of 2020, DOE required applicants to the Title XVII Loan Guarantee Program to enter into a “Borrower Support Letter” with third-party advisors, requiring that applicants directly pay the costs and expenses of DOE’s third-party advisors on a monthly basis and as soon as advisors were engaged. DOE also charged an application fee for each of Part I and Part II of its application process and a portion of a “facility fee” upon execution of a Conditional Commitment. The borrower’s responsibility for these fees and costs resulted in the borrower bearing a portion of the costs of the significant resources required to evaluate an application to the Title XVII Loan Guarantee Program at earlier stages of the application process. The fee and cost structure mimicked those typical of private sector debt markets.

Following the Energy Act of 2020, DOE modified its practices to eliminate application fees and to defer collection of the costs of DOE’s third-party advisors until financial closing of a loan guarantee. These modifications require DOE to obligate funds appropriated for the administration of the Title XVII Loan Guarantee Program to support the potential costs of DOE’s third-party advisors for each application.

A-1) With respect to costs incurred for DOE’s use of its third-party advisors, should DOE consider other applicant fee structures or arrangements not currently contemplated by the Title XVII Rule that are consistent with the provisions of the Energy Act of 2020?

- i. What fee structures should DOE consider to ensure both equitable access to the Title XVII Loan Guarantee Program and responsible use of agency resources, and enable LPO to retain sufficient funds to advance the purposes of Title XVII?
- ii. Should DOE consider entering into arrangements with applicants to require them to pay a fee to cover the costs of third-party advisors or otherwise require an applicant to

⁸ 42 U.S.C. 16512(h)(1), as amended by Pub. L. 116-260, sec. 9010(a)(3)(A) (2020).

- reimburse DOE for its third-party costs and expenses if the applicant's project does not result in financial closing of a loan guarantee?
- iii. Should DOE offer to enter into arrangements with applicants to allow them, solely at their discretion, to reimburse DOE's third-party costs before financial closing?
 - iv. What additional factors and criteria should DOE consider regarding recouping its costs incurred on applications that are denied, are withdrawn, or otherwise do not result in financial closing?

Section 9010(b) of the Energy Act of 2020 amends Section 1703 of the Energy Policy Act of 2005 to provide flexibility to the Secretary to, if regional variation significantly affects deployment, guarantee up to 6 projects deploying the same or similar technology as another project so long as no more than 2 guaranteed projects that use the same or similar technology are located in the same region of the United States.⁹ The Energy Act of 2020 does not provide guidance to the Secretary regarding how to define "regions" or "regional variation" for the purposes of implementing this provision under Title XVII.

A-2) What criteria should the Secretary consider when identifying specific regions of the United States and the effect of regional variation on technology deployment for the purposes of implementing this provision of the Energy Act of 2020?

- i. Are there certain categories of projects or technologies that would not be eligible for the Title XVII Loan Guarantee Program unless DOE utilized particular criteria to evaluate "regions" or "regional variation" under this provision? If so, what criteria should LPO consider? Are there other examples from governmental programs with region-based requirements or criteria that DOE should consider?
- ii. What additional factors and criteria should DOE consider when reviewing and evaluating multiple applications for projects that use the same or similar technology?

⁹ 42 U.S.C. 16513(f), as added by Pub. L. 116-260, sec. 9010(b)(3) (2020).

Section 9010(b) of the Energy Act of 2020 amends Section 1703 of the Energy Policy Act of 2005 to clarify that eligible projects under Title XVII may include “projects that employ elements of commercial technologies in combination with new or significantly improved technologies.”¹⁰

A-3) How should DOE consider innovative software, information technology applications, or control system technology under Title XVII, including DOE’s determination of eligible project costs?

B. IIJA

Section 40401(c) of the IIJA amends Section 1702 of the Energy Policy Act of 2005 to allow the Secretary to issue loan guarantees to projects receiving financial support or credit enhancements from a State energy financing institution.¹¹ “State energy financing institution” is defined by the statute as:

a quasi-independent entity or an entity within a State agency or financing authority established by a State:

- (i) to provide financing support or credit enhancements, including loan guarantees and loan loss reserves, for eligible projects; and
- (ii) to create liquid markets for eligible projects, including warehousing and securitization, or take other steps to reduce financial barriers to the deployment of existing and new eligible projects.¹²

“State” is defined as any state, the District of Columbia, and any territory or possession of the United States.¹³ State energy financing institutions may enter into partnerships with private entities, Tribal entities, and Alaska Native corporations in carrying out a project receiving a loan guarantee under Title XVII.¹⁴

B-1) What types of entities should be considered “State energy financing institutions” for the

¹⁰ 42 U.S.C. 16513(a), as amended by Pub. L. 116-260, sec. 9010(b)(1) (2020).

¹¹ 42 U.S.C. 16512(a), as amended through Pub. L. 117-58, sec. 40401(c)(2)(A) (2021). Projects receiving financial support or credit enhancements from a State energy financing institution need not employ new or significantly improved technologies to be eligible, but additional congressional appropriation is required before DOE may provide loan guarantees for such projects. 42 U.S.C. 16512(r), as added by Pub. L. 117-58, sec. 40401(c)(2)(C).

¹² 42 U.S.C. 16511, as amended through Pub. L. 117-58, sec. 40401(c)(1) (2021).

¹³ *Id.*; 42 U.S.C. 6802.

¹⁴ 42 U.S.C. 16512(r)(2), as added by Pub. L. 117-58, sec. 40401(c)(2)(C) (2021).

purposes of implementing these amendments to the Title XVII Loan Guarantee Program?

- i. What are some examples of “quasi-independent” entities?
- ii. Could a private entity formed for the above purposes be considered a “State energy financing institution”? If so, what other requirements should apply to such entities?
- iii. Should there be minimum ownership requirements or governance requirements for an entity to be considered an eligible State energy financing institution?

B-2) What types of financial support or credit enhancements from State energy financing institutions should DOE consider in evaluating projects under this authority? How can the loan or loan guarantee be applied in conjunction with the financial support or credit enhancements to most effectively achieve the objectives of the program?

B-3) How can DOE facilitate a nationwide program for partnering with State energy financing institutions? Is it feasible for DOE to establish a single program for State energy financing institutions, with uniform terms and requirements?

C. Title XVII Financing Structures

LPO is evaluating the types of financing structures that will best allow it to achieve its objective of utilizing its authorities to accelerate the deployment and commercialization of new and innovative technologies that are the key to achieving its greenhouse gas reduction goals. DOE wants to ensure that its Title XVII Rule facilitates applications for loan guarantees in support of each of the categories of eligible projects under Title XVII, including projects for critical minerals and supply chain projects.

C-1) Are there projects or financing structures, such as co-lending, funding a warehouse financing vehicle, or guaranteeing capital market instruments, that may be eligible under Title XVII but that are not contemplated by the existing Title XVII Rule?

C-2) For any such projects or structures proposed under C-1, how might DOE address or facilitate those projects or structures under a revised Title XVII Rule?

C-3) Should DOE enhance its support of eligible supply chain projects by allowing

borrowers the ability to provide additional types of collateral security, such as security interests in purchase orders, and if so what types of collateral security should DOE consider? How should DOE evaluate such projects?

C-4) Should DOE enhance its support of eligible projects that employ innovative software, information technology applications, control system technology, or other such technologies by allowing the borrowers the ability to provide additional types of collateral security, such as security interests in or rights to future cash flows from intellectual property? How should DOE evaluate such projects?

D. Title XVII Loan Guarantee Program Improvements

The Title XVII Rule has been largely the same since its original issuance pursuant to DOE's rulemaking at the onset of the program¹⁵. LPO has received a significantly higher volume of applications to its Title XVII Loan Guarantee Program in the past twelve months than in recent years. Considering this increased volume of applications and its new authorities, DOE is seeking to ensure that the Title XVII Rule establishes clear requirements and procedures for potential applicants and implements its statutory authority under Title XVII as intended by Congress and in line with the Administration's policies.

D-1) Should DOE consider alternatives to its current practice of issuing separate solicitations for applications for Title XVII loan guarantees based on particular eligibility or funding categories? For example, similar to other federal loan programs, should LPO issue an open solicitation for all applications for loan guarantees for eligible projects under Title XVII? If so, how should DOE use programmatic, technical, financial, and other factors to evaluate each application on a rolling basis?

D-2) Should the Title XVII Rule clarify what DOE considers a "project" for purposes of Title XVII applications? Should the rule provide criteria regarding the eligibility of distributed

¹⁵ 72 FR 60116 (October 23, 2007).

energy resources as a single project? If so, could DOE then improve the definition of “project cost”?

D-3) Would applicants be prejudiced or disadvantaged if the application process were to not include the negotiation of a preliminary term sheet with DOE?

D-4) How else can DOE modify its application process or requirements in a manner that improves its implementation of the Title XVII Loan Guarantee Program?

III. Submission of Comments

DOE invites all interested parties to submit in writing by [***INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER***], comments and information on matters addressed in this RFI.

Submitting comments via email or postal mail. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author. Attachments should be limited to no more than 10 megabytes (MB) in size.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a

list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on May 26, 2022, by Dong Kim, Deputy Director, Loan Programs Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 26, 2022.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

[FR Doc. 2022-11734 Filed: 5/31/2022 8:45 am; Publication Date: 6/1/2022]